

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

FEB 2 1991

UNITED STATES OF AMERICA,

Plaintiff,

v.

TOWN OF SOUTHAMPTON, NEW YORK,

Defendant.

CV-90-3309

CIVIL ACTION NO.

WEXLER, J.

JORDAN, M.

CONSENT DECREE

WHEREAS, contemporaneously with the lodging of this Consent Decree (hereinafter, "Consent Decree"), the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a Complaint in this matter pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. §§9601-9675, for the recovery of response costs incurred by the United States and for the performance of remedial action in response to releases and threatened releases of hazardous substances into the environment at the North Sea Landfill site (the "Site"), located in the Town of Southampton on eastern Long Island, New York;

WHEREAS, EPA, pursuant to Section 105 of CERCLA, 42 U.S.C. §9605, placed the Site on the National Priorities List ("NPL"), which is codified at 40 CFR Part 300, Appendix B, and published in the Federal Register in October, 1984, 49 Fed. Reg. 37070;

240797



WHEREAS, the Town of Southampton (hereinafter referred to as "Settling Defendant") is a municipal corporation as defined in N.Y. Town Law (McKinney 1987) and N.Y. General Municipal Law (McKinney 1986).

WHEREAS, since 1963, Settling Defendant has operated the North Sea Landfill (the "Landfill"), a 131 acre municipal landfill at the intersection of Majors Path and Old Fish Cove Road in Southampton, New York, for the disposal of municipal solid waste, refuse, debris and septic system waste sludges from residential, industrial, and commercial sources. The Landfill is a source of contamination at the Site;

WHEREAS, the Site is in a recharge area within a designated sole source aquifer, and a plume of groundwater emanating from the Site contains heavy metals, including lead, cadmium, chromium, iron, and manganese, as well as volatile organic compounds;

WHEREAS, there are over 100 homes within a 1/2 mile radius of the Landfill, many of which are located hydrologically down-gradient from the Landfill, and have been provided with a public potable water supply by Settling Defendant as a result of the migration of the groundwater plume;

WHEREAS, Fish Cove, located approximately 1500 feet northwest of the Landfill, the nearest point of surface water from the Landfill, has been receiving discharges from the plume.

WHEREAS, the Landfill has been divided as follows: Cell #1, which is estimated to contain 1.3 million cubic yards of

waste in 13 acres of Landfill, was closed and partially capped in 1985 and is the source of the migrating plume; Cell #2 ceased receiving wastes on October 1, 1989, and is scheduled for immediate closure pursuant to New York State Part 360 Closure Requirements, as set forth in an administrative order on consent entered into by Settling Defendant herein and the New York State Department of Environmental Conservation ("NYSDEC"); Cell #3 began receiving wastes in December of 1989 in accordance with a NYSDEC Solid Waste Management Facility Permit; and an area consisting of 12 scavenger sludge lagoons which were decommissioned in 1986 and have been filled with clean fill;

WHEREAS, on March 31, 1987, Settling Defendant herein entered into an Administrative Order On Consent with EPA thereby agreeing to perform a remedial investigation and feasibility study ("RI/FS") at the Site. The Site was divided into two "operable units" ("OUs") for purposes of remediation; Settling Defendant completed an RI/FS for OU One which addresses source control management of Cell #1 and the former sludge lagoons, and a second RI/FS for OU Two is being performed to address groundwater contamination related to the Landfill and its effect on Fish Cove;

WHEREAS, the results of the OU One RI have, inter alia, confirmed the existence and pathways of groundwater plumes migrating from Cell #1 and the former sludge lagoons as described hereinabove.

WHEREAS, EPA released the OU One RI/FS Report to the public on September 2, 1989, and provided the public with a public comment period, and comments were submitted thereon;

WHEREAS, EPA provided notice to the public of the ROD (in the form of a Proposed Remedial Action Plan ("PRAP")) and made it available to the public for review;

WHEREAS, EPA issued a Record of Decision ("ROD") on September 29, 1989 in which EPA selected a remedy with respect to OU One, set forth the reasons for said selection, and responded to the significant public comments received during the public comment period;

WHEREAS, the State gave its concurrence with respect to the remedy selected in the ROD;

WHEREAS, EPA and Settling Defendant believe that the remedy selected in the ROD is consistent with the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR Part 300, and CERCLA;

WHEREAS, in accordance with Section 121(f)(1)(F) of CERCLA, 42 U.S.C. §9621(f)(1)(F), EPA has notified the State of New York regarding EPA's negotiations with Settling Defendant and this Consent Decree and has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree;

WHEREAS, pursuant to Section 122(j) of CERCLA, 42 U.S.C. §9622(j), EPA has notified the Federal natural resources trustees of its negotiations with Settling Defendant regarding

this Consent Decree and has encouraged the participation of the Federal natural resource trustees in such negotiations;

WHEREAS, Settling Defendant represents that it is qualified to implement the work, hereunder, and agrees to implement said work. EPA has determined and Settling Defendant agrees (a) that implementation of the requirements of this Consent Decree will expedite the performance of the remedial action selected in the ROD and will avoid protracted litigation, and (b) that the entry of this Consent Decree is in the public interest;

WHEREAS, pursuant to Section 122 of CERCLA, 42 U.S.C. §9622, the United States and Settling Defendant have each stipulated and agreed to the making and entry of this Consent Decree prior to the taking of any testimony, based upon the pleadings herein;

WHEREAS, the agreement by the parties to enter into this Consent Decree was negotiated in good faith and neither represents an admission as to the truth of the factual statements, legal conclusions, or allegations contained herein, nor does it represent an acknowledgement of liability on behalf of Settling Defendant. Execution of this Consent Decree does not constitute a waiver of rights other than those waived in this Consent Decree. By entry of this Consent Decree, Settling Defendant does not acknowledge that the threatened release at or from the Site presents either an imminent or substantial risk to public health or the environment.

NOW THEREFORE, it is ORDERED, ADJUDGED, AND DECREED as follows:

I.

JURISDICTION

The Court has jurisdiction over the subject matter of this action and the parties to this Consent Decree pursuant to Sections 106, 107, and 113 of CERCLA, 42 U.S.C. §§9606, 9607, and 9613, and 28 U.S.C. §1345. For purposes of entering into this Consent Decree, Settling Defendant agrees that the Complaint states claims against Settling Defendant upon which relief may be granted. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. §9613(b). Settling Defendant waives all objections to and agrees not to challenge this Court's jurisdiction to enter and enforce this Consent Decree.

II.

PARTIES BOUND

This Consent Decree applies to and is binding upon the undersigned parties and their officers, directors, employees, agents, contractors, receivers, trustees, successors and assigns. Each undersigned representative of the parties to this Consent Decree certifies that she or he is authorized by the entity which she or he represents to enter into the terms and conditions of the Consent Decree and to execute and legally bind that entity to it. Settling Defendant shall provide a copy of this Consent Decree to each contractor and subcontractor retained to perform the Work required by this Consent Decree and shall condition all

contracts and subcontracts entered into for the performance of such Work upon compliance with the terms and conditions of this Consent Decree. Settling Defendant shall be responsible to the United States for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be related by contract to Settling Defendant within the meaning of Section 107(b)(3) of CERCLA; thus, as to acts or omissions of contractors, Settling Defendant shall not assert a defense based on Section 107(b)(3) of CERCLA.

III.

DEFINITIONS

Whenever the following terms are used in this Consent Decree, the following definitions specified in this Section shall apply:

A. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

B. "Consent Order" means the Administrative Order On Consent, Index No. II-CERCLA-70202, issued by EPA on March 31, 1987.

C. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on

a Saturday, Sunday, or Federal holiday, the period shall run until the end of the next working day.

D. "EPA" means the United States Environmental Protection Agency.

E. "Hazardous substance" shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

F. "National Contingency Plan" or "NCP" shall mean the National Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including any amendments thereto.

G. "Operation and Maintenance" or "O & M" means those activities required under this Consent Decree for the purpose of maintaining the effectiveness of the measures taken in the Remedial Action (as defined below) following the implementation of those measures.

H. "Party" or "Parties" means the United States of America and/or Settling Defendant.

I. "Plaintiff" means the United States of America acting on behalf of EPA.

J. "Remedial Action" means the remedy authorized by the September 29, 1989 ROD with respect to the Site, as further delineated in this Consent Decree and the various EPA-approved plans referred to in Section VI., below.

K. "Response Costs" means any costs incurred by Plaintiff pursuant to CERCLA.

L. "Settling Defendant" means the Town of Southampton, a municipality in New York State, and its officers, directors, receivers, trustees, agents, successors and assigns.

M. "Site" means the North Sea Landfill Superfund Site, which includes Cell #1, the decommissioned sludge lagoons, and those areas affected by contamination emanating therefrom. The North Sea Landfill is located at the intersection of Majors Path and Old Fish Cove Road in the Township of Southampton on eastern Long Island, Suffolk County, New York. The Site's location is shown in Figure 1, attached hereto.

N. "State" means the State of New York.

O. "Work" means all work required by and pursuant to this Consent Decree, including the implementation and operation and maintenance of the Remedial Action authorized by the September 29, 1989 ROD and the preparation of the schedules, plans and reports required hereunder to be submitted in connection therewith.

P. All terms not otherwise defined herein shall have their ordinary meanings except as to those terms defined in CERCLA or the NCP, which shall have the meanings set forth therein.

IV.

PURPOSE

The purpose of this Consent Decree is to serve the public interest by protecting the public health, welfare, and the environment from releases and threatened releases of hazardous substances at and from the Site, and to settle certain claims

asserted by the United States against Settling Defendant as stated in the Complaint.

V.

GENERAL PROVISIONSA. Commitment of Settling Defendant:

1. Settling Defendant agrees to finance and perform the Work in accordance with the standards, specifications, requirements and schedules set forth herein, or approved by EPA pursuant to this Consent Decree, and to reimburse the United States for response costs as provided herein.

2. Settling Defendant shall assume any and all liability arising from its acts or omissions in the performance of the work or its failure to perform fully or completely the requirements of this Consent Decree.

B. Permits and Approvals:

1. All activities undertaken by Settling Defendant pursuant to this Consent Decree shall be undertaken in accordance with the requirements of all applicable local, state and federal laws, regulations and permits, including, but not limited to, laws relating to occupational safety and health. In the event that there is a conflict in an application of applicable federal, state, or local laws or regulations, the more stringent law or regulation shall apply. Notwithstanding any other provision in this Consent Decree and pursuant to Section 121(e)(1) of CERCLA, no federal, state or local permits shall be required for any response action conducted on-site, although

Settling Defendant shall comply with the substantive requirements that would otherwise be included in such a permit. Settling Defendant shall obtain all permits and approvals necessary for off-site work under federal, state or local laws and shall submit timely applications and requests for, and shall diligently seek to obtain, any such permits and approvals. This Consent Decree is not, nor shall it act as nor is it intended by the Parties to be, a permit issued pursuant to any federal, state or local law or regulation.

2. Settling Defendant shall include in all contracts or subcontracts entered into for Work required under this Consent Decree provisions stating that such contractors or subcontractors, including their agents and employees, shall perform all activities required by such contracts or subcontracts in compliance with this Consent Decree and all applicable laws and regulations.

C. National Contingency Plan:

Settling Defendant shall perform the Work in accordance with the NCP, 40 CFR Part 300, and any amendments thereto. The parties agree that the ROD, as set forth in Appendix 1, and the Remedial Action are consistent with the NCP, as it existed at the time that the ROD was issued.

D. Compliance with Other Laws

All off-site transfer, treatment, storage, or disposal of hazardous substances by Settling Defendant must be in compliance with the applicable requirements of the Resource

Conservation and Recovery Act, 42 U.S.C. §§6901-6991, Section 121(d)(3) of CERCLA, 42 U.S.C. §9621(d)(3), the Toxic Substances Control Act, 15 U.S.C. §§2601-2629, as well as their implementing regulations, and all other applicable laws, including, but not limited to, 40 CFR Parts 262 and 263 and 6 NYCRR Part 372.

Furthermore, Settling Defendant shall provide EPA with at least fourteen (14) days advanced notice of any facilities that Settling Defendant proposes to use for such off-site transfer, storage, treatment, or disposal. Any and all off-site disposal activities conducted by Settling Defendant under this Consent Decree shall be performed in conformance with the NCP, and any amendments thereto, and Revised Procedures for Planning and Implementing Off-site Response Actions (U.S. EPA Office of Solid Waste and Emergency Response, November 13, 1987). In addition, if hazardous substances from the Site are to be shipped to a waste management facility outside of New York State, Settling Defendant shall notify the environmental agency of said state of the following: (i) the name and location of the facility to which the wastes are to be shipped; (ii) the type and quantity of waste to be shipped; (iii) the expected schedule for the waste shipments; and (iv) the method of transportation. Settling Defendant shall provide such notification to the affected state in writing as soon as practicable, but in any event at least fourteen (14) business days prior to said shipments.

E. Settling Defendant shall give EPA fourteen (14) days advance notice prior to the commencement of all field activities to be performed pursuant to this Consent Decree.

F. Within fourteen (14) days of the Court's entry of this Consent Decree, Settling Defendant shall record this Consent Decree in the Suffolk County Clerk's Office in Riverhead, New York.

G. Settling Defendant shall ensure that a qualified professional engineer is present at the Site at all times when Work is being performed at the Site under this Consent Decree, and that the engineer observes and inspects such Work.

H. 1. Within thirty (30) days after the entry of this Consent Decree, Settling Defendant shall record a certified copy of this Consent Decree with the Recorder's Office [or Registry of Deeds], Suffolk County, State of New York. Thereafter, each deed, title, or other instrument of conveyance for property included in any portion of the Site owned by Settling Defendant shall contain a notice stating that the property is subject to this Consent Decree and any lien which the United States may retain and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree.

2. The obligations of Settling Defendant with respect to the provision of access under Section XI. (and relevant institutional controls) shall run with the land and shall be binding upon Settling Defendant and any and all persons who

subsequently acquire any such interest or portion thereof (hereinafter, "Successors-in-Title"). Within thirty (30) days after the entry of this Consent Decree, Settling Defendant shall record at the Registry of Deeds, or other office where land ownership and transfer records are maintained for the property, a notice of obligation to provide access to that portion of the Site. Each subsequent deed to any such property included in the Site shall reference the recorded location of such notice and covenants applicable to the property.

VI.

WORK TO BE PERFORMED

REMEDIAL DESIGN

A. Within thirty (30) days of the effective date of the Consent Decree, Settling Defendant may submit to EPA for review and approval a scope of work ("SOW") outlining its proposed design for a low permeability cap system for Cell #1, consistent with 6 NYCRR, Part 360, of the New York State landfill closure requirements. EPA will review and comment on the SOW, and at such time as EPA determines the acceptability of the SOW, EPA will transmit to Settling Defendant a written statement as to whether the SOW is acceptable.

B. Remedial Design Work Plan

1. Within thirty (30) days of (a) the effective date of this Consent Decree or (b) notification by EPA as to the acceptability of the SOW, whichever is later, Settling Defendant shall submit to EPA for review and approval a detailed remedial

design work plan ("RD Work Plan") outlining the following activities:

- (a) the design, construction, operation and maintenance of a low permeability cap system for Cell #1, consistent with New York State landfill closure requirements, and operation and maintenance of the cover system;
- (b) a confirmatory sampling plan for the decommissioned sludge lagoons;
- (c) the design and construction of the chain link fence;
- (d) the implementation of deed restrictions limiting future uses of the Landfill property;
- (e) air and water quality monitoring program;
- (f) Quality Assurance/Quality Control ("QA/QC") Plan, which shall be completed in accordance with the EPA publication "Test Methods for Evaluating Solid Wastes: ("SW-846") (July, 1982, or as updated), Guidance for Preparation of Combined Work/Quality Assurance Project Plans for Water Monitoring" (USEPA, Office of Water Regulations and Standards, May, 1983);
- (g) Health and Safety Plan which will be submitted by Settling Defendant pursuant to this Consent Decree and which shall satisfy the requirements of the Occupational Safety and Health Guidance for Hazardous Site

Activities [October 1985 (DHH 5 NIOSH) Publication No. 85-115] and EPA's Standard Operating Safety Guides; and
(h) Operation & Maintenance Plan.

EPA will review and comment on the RD Work Plan. Within thirty (30) days of Settling Defendant's receipt of EPA's comments, Settling Defendant shall modify the RD Work Plan as required by those comments, or as otherwise approved by EPA, and resubmit the RD Work Plan as modified to EPA. At such time as EPA determines that the RD Work Plan is acceptable, EPA will transmit to Settling Defendant a written statement to that effect. Settling Defendant shall perform the Remedial Design in conformance with the EPA-approved RD Work Plan and the ROD.

C. QA/QC Plan and Management Plan

1. Within forty (40) days of Settling Defendant's receipt of EPA's approval of the RD Work Plan, a QA/QC Plan and a Management Plan ("MP") shall be developed and submitted. The QA/QC Plan and MP shall encompass the requirements set forth above. The QA/QC Plan and MP shall include the following items:

- i. a map depicting sampling locations;
- ii. an over all Management Plan, including identification of contractors and subcontractors (if possible) and their respective responsibilities for performance of sampling, analysis and monitoring activities;

- iii. a schedule for performing specific tasks;
- iv. provisions for the completion and submission to EPA, within twenty-one (21) days of receipt, of the results of each sample analysis, as well as QA/QC evaluation of the laboratory data and sampling and analytical procedures used for each sample obtained;
- v. a description of the chain of custody procedures to be followed, which shall conform with those set forth in Section 1.3 of SW-846;
- vi. a Contingency Plan;
- vii. a provision that any laboratory used by Settling Defendant shall subscribe to EPA Quality Assurance procedures. Sampling data generated consistent with the QA/QC Plan shall be admissible as evidence, without objection, in any proceeding under this Consent Decree. Settling Defendant shall assure that EPA personnel or authorized representatives are allowed access to any laboratory utilized by Settling Defendant in implementing this Consent Decree. In addition, Settling Defendant shall have a designated laboratory analyze samples submitted by EPA for quality assurance monitoring;
- viii. the curricula vitae of each professional expected to participate in on-site monitoring

activities, with a provision for submitting further curriculum vitae as other professionals become or are about to become involved in these activities; and

ix. a description of the QA/QC testing protocols, including the frequency of inspection, field testing, sampling for laboratory field testing equipment, audits, the sampling sizes, the lab procedures, the limits for test failure and a description of corrective procedures.

EPA will review and comment on the QA/QC Plan and MP. Within thirty (30) days of Settling Defendant's receipt of EPA's comments, Settling Defendant shall modify the QA/QC Plan and MP as required by those comments or as otherwise approved by EPA and resubmit the QA/QC Plan and MP, as modified, to EPA. At such time as EPA determines that the QA/QC Plan and MP are acceptable, EPA will transmit to Settling Defendant a written statement to that effect.

D. Health and Safety Plan

1. Within forty-five (45) days of Settling Defendant's receipt of EPA's approval of the RD Work Plan, Settling Defendant shall prepare a Health & Safety Plan ("H & S Plan") in accordance with the Superfund Remedial Design and Remedial Action Guidance dated September 1986, OSWER Directive 9355.0-4A to be submitted to EPA for review and approval. The H & S Plan shall include, but not be limited, to the following:

- i. requirements set forth in the Occupational Safety and Health Guidance for Hazardous Site Activities [October 1985 (DHH 5 NIOSH) Publication No. 85-115];
- ii. EPA's Standard Operating Safety Guides; and
- iii. health and safety requirements for the on-site investigations, the sampling program, the closure construction period and the post-closure operation and maintenance period.

2. If EPA determines that the H & S Plan should be altered, EPA will provide to Settling Defendant a written statement describing the required alterations (the "Health & Safety Comments"). Within fourteen (14) days of Settling Defendant's receipt of the Health & Safety Comments, Settling Defendant shall submit to EPA a final H & S Plan which conforms to the Health & Safety Comments. At such time as EPA determines that the H & S Plan is acceptable, EPA will transmit to Settling Defendant a written statement to that effect.

E. Confirmatory Sampling Program Report

1. Within fourteen (14) days of Settling Defendant's receipt of EPA approval of both the QA/QC Plan and the H & S Plan, Settling Defendant shall initiate contractor procurement in accordance with the appropriate municipal bidding requirements. Within fourteen (14) days of Settling Defendant's procurement of a contractor to implement the confirmatory sampling program, the confirmatory sampling of the decommissioned sludge lagoons shall

be initiated as stated in the approved QA/QC plan and RD Work Plan. The confirmatory sampling shall include up to three borings in each previously unsampled lagoon or until soil/sludge is observed. Sampling of the first observed soil/sludge shall be analyzed from each such lagoon, as set forth in the ROD.

2. Settling Defendant shall submit to EPA within thirty (30) days of Settling Defendant's receipt of validated and reduced sampling data a document entitled "Results of the Confirmatory Sampling Report". The sampling results shall be generated in a fashion consistent with the QA/QC Plan. As set forth in the ROD, the results of the confirmatory sampling program shall be reviewed by EPA to determine whether hazardous wastes or substances are present that may pose a threat to public health or the environment. Unless such hazardous wastes or substances are present and pose such a threat, the decommissioned sludge lagoons shall be addressed, to the extent it is appropriate, in the second Operable Unit study which is currently being conducted at the Site.

F. Pilot Study

1. Within twenty-one (21) days of Settling Defendant's receipt of EPA's approval of the RD Work Plan, Settling Defendant shall conduct a Pilot Study to determine whether a flexible, synthetic membrane liner or a low permeability material/soil is best suited for use as the barrier layer in the capping of Cell #1, pursuant to 6 NYCRR Part 360 requirements. The Pilot Study may utilize data generated by documented literatures and other

available information to design the barrier layer. However, this should not be construed as limiting Settling Defendant's responsibility for achieving the requirements of 6 NYCRR Part 360.

2. Within twenty-one (21) days of the completion of the Pilot Study, Settling Defendant shall submit a Pilot Study report ("PS Report") which shall present the results of the Pilot Study.

G. Plans and Specifications

1. Within seventy (70) days of EPA approval of the PS Report, Settling Defendant shall submit plans and specifications for the remedial design ("RD Plans and Specifications") when said plans and specifications are thirty-five percent complete. These RD Plans and Specifications shall include engineering drawings of the cover system for Cell #1 and survey reports and a comprehensive specifications report documenting all labor, materials, and equipment to be used in completing the Remedial Action in a manner satisfying all applicable Federal, State, and local requirements.

2. EPA will review and comment on the thirty-five percent complete RD Plans and Specifications. Within thirty (30) days of Settling Defendant's receipt of EPA's comments, Settling Defendant shall modify, if appropriate, the thirty-five percent complete RD Plans and Specifications as required by EPA and resubmit it, as modified, to EPA. At such time as EPA determines that the thirty-five percent complete RD Plans and Specifications

are acceptable, EPA will transmit to Settling Defendant a written statement to that effect.

H. O & M Plan

1. Settling Defendant shall prepare a draft Operation and Maintenance Plan ("O & M Plan") in accordance with the Superfund Remedial Design and Remedial Action Guidance, dated September 1986, OSWER Directive 9355.0-4A, to be submitted forty (40) days after the approval of the thirty-five percent complete plans & specifications. The O & M Plan shall include, but not be limited to, the following information relating to the implementation of the Work required in the ROD and this Consent Decree:

- i. a description of the personnel requirements, responsibilities, and duties, including discussion for training, lines of authority, sampling, analysis, and monitoring conducted under this Consent Decree;
- ii. a description of machinery and equipment to be used in conducting the work under this Consent Decree, including their intended uses, and safety features;
- iii. a description of hours and days of operation, landfill usage rules and regulations, and traffic flow controls;
- iv. a copy of the environmental monitoring plan as required in 6 NYCRR Part 360;
- v. a description of the gas monitoring program, which must discuss explosive gas generation at the Site

and the controls used to ensure that gas generated at the Site will not create a hazard to health safety, or property;

- vi. a description of how winter and inclement weather operations will be conducted; and
- vii. a contingency plan.

2. If EPA determines that the draft O & M Plan should be altered, EPA will provide to Settling Defendant a written statement describing the required alterations (the "O & M Comments"). Within twenty-one (21) days of Settling Defendant's receipt of the O & M Comments, Settling Defendant shall submit to EPA a final O & M Plan which conforms to the O & M Comments. At such time as EPA determines that the O & M Plan is acceptable, EPA will transmit to Settling Defendant a written statement to that effect.

I. Remedial Design Report

1. Within sixty (60) days of Settling Defendant's receipt of EPA approval of thirty-five percent complete RD Plans and Specifications, Settling Defendant shall submit a Remedial Design Report ("RD Report") to EPA for review and approval. The RD Report shall consist of the approved final RD Plans and Specifications and the final construction cost estimate for the low permeability cap system for Cell #1.

2. EPA will review and comment on the RD Report. Within thirty (30) days of Settling defendant's receipt of EPA comments, Settling Defendant shall modify the RD Report as

required by EPA's comments or as otherwise approved by EPA and shall submit the modified RD Report to EPA. At such time as EPA determines that the RD Report is acceptable, EPA will transmit to Settling Defendant a written statement to that effect.

REMEDIAL ACTION

J. Remedial Action Work Plan

1. Within thirty (30) days of Settling Defendant's receipt of EPA's written notice that the Remedial Design is completed, Settling Defendant shall submit to EPA for review and approval a detailed remedial action plan ("RA Work Plan") for implementation of the work set forth in the RD Report. The RA Work Plan shall address, though should not necessarily be limited to implementation of the following:

- i. Construction Services, including but not limited to, review of shop drawings to confirm consistency with the intent of the Remedial Design, construction oversight, and the submission of engineering drawings depicting the constructed facility;
- ii. Modification of the Operation and Maintenance (O & M) Manual(if necessary).
- iii. Initial Testing Program (if necessary)
- iv. Starting Services;
- v. Schedules for all of the above, including construction.

2. EPA will review and comment on the RA Work Plan. Within thirty (30) days of Settling Defendant's receipt of EPA's

comments, Settling Defendant shall modify the RA Work Plan as required by those comments or as otherwise approved by EPA and resubmit the RA Work Plan, as modified, to EPA. At such time as EPA determines that the RA Work Plan is acceptable, EPA will transmit to Settling Defendant a written statement of approval. Settling Defendant shall perform the Remedial Action in conformance with the EPA-approved RA Work Plan and the ROD.

3. Within fourteen (14) days of Settling Defendant's receipt of EPA's statement of approval of the RA Work Plan, Settling Defendant shall initiate contractor procurement in accordance with the appropriate municipal bidding requirements. Within fourteen (14) days of Settling Defendant's procurement of a contractor to implement the RD Report, construction activities shall be initiated in conformance with the EPA-accepted Remedial Design.

4. Within thirty (30) days of the completion of construction, Settling Defendant shall submit to EPA as-built engineering drawings which depict the constructed system under this Consent Decree. At such time as EPA determines that said engineering drawings are acceptable, EPA will send Settling Defendant a written statement of approval.

5. Within ten (10) days of the completion of construction of the cover system, Settling Defendant and its contractor shall be available for a final inspection by EPA and/or EPA's representatives. The final inspection shall include

an inspection tour of the work performed to determine project completeness and operational testing of all equipment.

6. Prior to the final inspection, Settling Defendant shall submit an O & M Manual which shall supplement the O & M Plan completed pursuant to Subsection E., above, of this Section, by addressing the O & M requirements for the work required under this Consent Decree as actually constructed. This O & M Manual shall conform to the EPA guidelines contained in "Considerations for Preparation of Operation and Maintenance Manuals," EPA 68-01-0341.

7. EPA shall review and comment on the O & M Manual. If EPA determines that the O&M Manual is acceptable, EPA will provide Settling Defendant with a written statement of approval of the O & M Manual.

VII.

U.S. EPA PERIODIC REVIEW TO ASSURE

PROTECTION OF HUMAN HEALTH AND ENVIRONMENT

A. Pursuant to Section 121(c) of CERCLA, 42 U.S.C. §9621(c), and any applicable regulations, EPA will review the sufficiency of the implemented Remedial Action at least every five (5) years after initiation of the Remedial Action to assure that human health and the environment are being protected. If upon any such review, EPA, in its sole discretion, determines that further response action is necessary at the Site to assure protection of human health and the environment, EPA may take or require Settling Defendant or any other responsible parties to

take such additional response action pursuant to CERCLA in the sole discretion of EPA.

B. Settling Defendant shall reimburse EPA for the costs incurred in conducting the periodic reviews referred to in this Section.

C. Upon completion of each of the reviews pursuant to this Section, EPA will notify Settling Defendant of its determination and may order additional response action pursuant to Section 106 of CERCLA, or may take additional response action pursuant to Section 104 of CERCLA, to assure protection of human health and the environment. Settling Defendant will be provided with an opportunity to confer with EPA on any response action ordered pursuant to Section 106 of CERCLA and/or with notification of any response action which shall be conducted by EPA pursuant to Section 104 of CERCLA.

VIII.

SITE HEALTH AND SAFETY PLANS

The Site Health and Safety Plan that Settling Defendant is to submit pursuant to this Consent Decree shall satisfy the requirements of 29 CFR §1910.120, as well as EPA's "Standard Operating Safety Guides" (OSWER, 1988; or as revised and updated).

IX.

QUALITY ASSURANCE/QUALITY CONTROL; CHAIN OF CUSTODY

A. The quality assurance/quality control ("QA/QC") Plan(s) to be submitted by Settling Defendant pursuant to this Consent

Decree shall be completed in accordance with the EPA publication "Test Methods for Evaluating Solid Wastes" ("SW-846") (November, 1986), and the EPA document entitled "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans" (QAMS-005/80), or any revised versions thereof.

B. Settling Defendant shall use QA/QC procedures in accordance with the QA/QC Plan(s) submitted and approved by EPA pursuant to this Consent Decree, and shall use standard EPA Chain of Custody procedures, as set forth in the National Enforcement Investigations Center Policies and Procedures Manual (November 1984), the National Enforcement Investigations Center Manual for the Evidence Audit (September 1981), and Section 1.3 of SW-846, or any amended versions thereof, or any other EPA approved protocol, for all sample collection and analysis activities conducted pursuant to this Consent Decree. In addition, Settling Defendant shall:

1. Ensure that all contracts with laboratories used by Settling Defendant for the analysis of samples taken pursuant to this Consent Decree provide access to EPA personnel and EPA-authorized representatives to assure the accuracy of laboratory results related to the implementation of the Remedial Action;

2. Ensure that the laboratories utilized by Settling Defendant for the analysis of samples taken pursuant to this Consent Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for

Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis", dated February 1988, and any amendments made thereto during the course of the implementation of this Consent Decree;

3. Ensure that all laboratories used by Settling Defendant for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program; and

4. Ensure that the laboratories used by Settling Defendant for the analysis of samples taken pursuant to this Consent Decree analyze samples that EPA may submit to those laboratories for purposes of insuring that the laboratories meet EPA-approved QA/QC requirements.

X.

PROJECT COORDINATOR

A. Within fourteen (14) days of the effective date of this Consent Decree, EPA and Settling Defendant shall each designate Project Coordinators to monitor the progress of the Work and to coordinate communication between EPA and Settling Defendant. The EPA Project Coordinator shall have the authority vested in the On-Scene Coordinator and the Remedial Project Manager by the NCP as well as the authority to ensure that the Work is performed in accordance with all applicable statutes, regulations, and this Consent Decree. The EPA Project Coordinator shall also have the authority to require a cessation of the performance of any portion of the Work that, in the opinion of the EPA Project Coordinator, may present or contribute

to an endangerment to public health, welfare, or the environment or cause or threaten to cause the release of hazardous substances from the Site. In the event the EPA Project Coordinator suspends the Remedial Action or other Work, EPA shall extend the compliance schedule of this Consent Decree as appropriate for a period of time equal to the time of the suspension of the Remedial Action or other Work. EPA shall notify Settling Defendant, in writing, of any such unilateral extension.

B. EPA and Settling Defendant shall have the right to change their respective Project Coordinators. Such a change shall be accomplished by notifying the other party in writing at least seven (7) days prior to the change where possible, and concurrently with the change or as soon thereafter as possible in the event that advance notification is not possible.

C. Settling Defendant's Project Coordinator shall have technical expertise sufficient to adequately oversee all aspects of the Work. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities. Settling Defendant's selection of a Project Coordinator shall be subject to EPA approval.

D. The EPA Project Coordinator may assign other representatives, including other EPA employees or contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities. Prior to invoking formal Dispute Resolution procedures, any disputes arising

between the EPA Site representative and Settling Defendant's Site representative or their contractors which cannot be resolved shall be referred to the EPA Project Coordinator.

XI.

FACILITY ACCESS, SAMPLING, DOCUMENT AVAILABILITY

A. To the extent that the Site or other areas where Work is to be performed hereunder is presently owned by parties other than those bound by this Consent Decree, Settling Defendant shall obtain access agreements from the present owners for purposes of implementing the requirements of this Consent Decree. Such agreements shall provide access not only for Settling Defendant, but also for EPA and NYSDEC and authorized representatives or agents of EPA and NYSDEC. If such access agreements are not obtained by Settling Defendant within the time periods specified herein, Settling Defendant shall so notify EPA, and Settling Defendant shall use its best efforts to otherwise secure the necessary access. "Best efforts", for purposes of securing access, includes, but is not limited to, the payment of a reasonable sum of money as consideration for access. Should Settling Defendant, using its best efforts, be unable to obtain within thirty (30) days of entry of this Consent Decree access to the Site or other areas where Work is to be performed hereunder, Settling Defendant shall so notify EPA and shall include in that notification a summary of the steps Settling Defendant has taken to attempt to obtain access. As appropriate, EPA may in its sole discretion assist Settling Defendant in obtaining such access.

Settling Defendant shall reimburse EPA for all costs, including enforcement costs, incurred by EPA in assisting Settling Defendant in obtaining such access.

B. During the effective period of this Consent Decree, EPA, NYSDEC and their authorized representatives, including contractors, shall have access to the Site, and any other premises upon which field work or laboratory analytical work is to be performed under this Consent Decree, for purposes of monitoring the progress of activities taking place, verifying any data or information submitted to EPA, conducting investigations relating to contamination at or near the Site, obtaining samples at the Site, inspecting and copying records, operating logs, contracts, or other documents required to assess Settling Defendant's compliance with the Consent Decree, or for any other purpose reasonably related to EPA's and/or NYSDEC's oversight of the implementation of this Consent Decree.

C. Within seven (7) days of a request by EPA, Settling Defendant shall make available to EPA the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendant with respect to the implementation of this Consent Decree. Such a request shall not relieve the obligation of Settling Defendant to submit monthly progress reports, as set forth in Section XIII., below.

D. Within a reasonable time of a request by Settling Defendant, EPA shall make available to Settling Defendant the results of all sampling and/or tests data obtained or generated

by or on behalf of EPA in its possession with respect to the Site and/or the implementation of this Consent Decree.

E. At the request of EPA, Settling Defendant shall provide split or duplicate samples to EPA or allow split or duplicate samples to be taken by EPA or its authorized representatives of any samples collected by Settling Defendant during the course of the implementation of this Consent Decree. Settling Defendant shall notify EPA at least fourteen (14) days in advance of the commencement of any sample collection activity. In addition, EPA shall have the right to take any additional samples that it deems necessary.

F. Notwithstanding any other provision of this Consent Decree, EPA hereby retains all of its information gathering, access, inspection, and enforcement authority under CERCLA, RCRA and any other applicable statute or regulations.

XII.

PUBLIC INSPECTION

All data, factual information, and documents submitted by Settling Defendant to EPA pursuant to this Consent Decree shall be available for public inspection unless identified as confidential by Settling Defendant and determined by EPA to merit treatment as confidential business information in accordance with applicable law. Settling Defendant shall not assert a claim of confidentiality regarding any monitoring or hydrogeologic data, any information specified in Section 104(e)(7)(F)(i) through (viii) of CERCLA, or any other chemical,

scientific or engineering data related to the Remedial Action or submitted pursuant to this Consent Decree.

XIII.

REPORTING REQUIREMENTS

A. In addition to any other requirement of this Consent Decree, Settling Defendant shall prepare and provide to the United States and NYSDEC written monthly progress reports which:

- (1) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month;
- (2) include all the plans and procedures completed under the RD/RA during the previous month;
- (3) include all the results of sampling and tests and all other data received by Settling Defendant during the previous month in the implementation of the Work;
- (4) describe all actions, data and plans which are scheduled for the next month and provide other information relating to the progress of design and construction as is customary in the industry;
- (5) include information regarding percentage of completion, all delays encountered or anticipated that may affect the future schedule for completion of the Remedial Action, and a description of all efforts made to mitigate those delays or anticipated delays. These progress reports are to be submitted to EPA by the tenth day of every month following the effective date of this Consent Decree.

B. If the date for submission of any item or notification required by this Consent Decree falls upon a weekend or State or Federal holiday, the time period for submission of that item or

notification is extended to the next working day following the weekend or holiday.

C. Upon the occurrence of any event during performance of the Work which requires reporting to the National Response Center, pursuant to Section 103 of CERCLA, Settling Defendant shall, within 24 hours, orally notify the EPA Project Coordinator, or, in the event of the unavailability of the EPA Project Coordinator, the Response and Prevention Branch, Region II, United States Environmental Protection Agency, in addition to the reporting required by Section 103. Within 20 days of the onset of such an event, Settling Defendant shall furnish to EPA a written report setting forth the events which occurred and the measures taken, and to be taken, in response thereto.

D. All reports and other documents submitted by Settling Defendant to EPA (other than the monthly progress reports referred to above) which purport to document Settling Defendant's compliance with the terms of this Consent Decree shall be signed by a responsible municipal official of Settling Defendant.

XIV.

PLANS, REPORTS AND ITEMS REQUIRING EPA APPROVAL

A. If EPA disapproves any plan, report (other than a progress report, covered by Section XIII.A., above), or other item required to be submitted for EPA approval pursuant to this Consent Decree, then Settling Defendant shall have twenty-one (21) days from the receipt of notice of such disapproval to correct any deficiencies and resubmit the plan, report, or item

for approval, unless a shorter or longer period is specified in the notice of disapproval which is consistent with this agreement. Any notice of disapproval by EPA shall include an explanation of why the plan, report or other item is being disapproved. Settling Defendant must resubmit the previously disapproved plan, report or item having addressed each of EPA's comments within the time period set forth above.

B. If any plan, report or other item required to be submitted to EPA for approval pursuant to this Consent Decree cannot be approved by EPA after it has been resubmitted following receipt of EPA's comments on the submittal, Settling Defendant may be deemed to be out of compliance with this Consent Decree. In the event that a resubmitted plan, report, or other item, or portion thereof, is disapproved by EPA, EPA retains the right to amend or develop the plan, report, or other item. Subject only to its right to invoke the dispute resolution procedures of Section XIX, below, Settling Defendant shall implement any such plan, report, or item as amended or developed by EPA.

C. All plans, reports and other submittals required to be submitted to EPA under this Consent Decree shall, upon approval by EPA, be deemed to be incorporated in and an enforceable part of this Consent Decree. Implementation of non-deficient portions of a submission shall not relieve Settling Defendant of its liability for stipulated penalties under Section XXI.

XV.

ASSURANCE OF ABILITY TO COMPLETE WORK

Settling Defendant shall demonstrate its ability to complete the Remedial Action and to pay all claims that may arise from the performance of the Remedial Action by obtaining, and presenting to EPA for approval within fifteen (15) days after the effective date of this Consent Decree, one of the following items: 1) performance bond; 2) letter of credit; 3) guarantee by a third party; 4) financial information in accordance with 40 CFR §264.143; or (5) a letter which demonstrates Settling Defendant's full faith and credit for undertaking the actions required under this Consent Decree. The bond, letter of credit, guarantee, financial information, or letter shall satisfy EPA that Settling Defendant has the requisite financial ability to implement this Consent Decree. If EPA determines that at any time the financial assurances provided by Settling Defendant are inadequate, EPA shall so inform Settling Defendant by written notice and Settling Defendant shall have thirty (30) days from the date of receipt of such written notice to obtain and provide EPA with additional financial assurances which shall assure EPA, in its discretion, that Settling Defendant has sufficient assets to complete the Remedial Action and to pay all claims against Settling Defendant that may arise from the performance of the Remedial Action.

XVI.

RETENTION OF RECORDS

A. Settling Defendant shall preserve and retain all records and documents now in its possession or control or which may come into its possession or control that relate in any manner to the Work at the Site, regardless of any document retention policy to the contrary, for six (6) years after the certification of completion of the Remedial Action.

B. Until completion of the Remedial Action and termination of this Consent Decree, Settling Defendant shall preserve, and shall instruct its contractors, the contractors' subcontractors, and anyone else acting on Settling Defendant's behalf at the Site to preserve (in the form of originals or exact copies, or, if approved by EPA, microfiche or microfilm of all originals) all records, documents, and information of whatever kind, nature, or description relating to the work performed under this Consent Decree. Upon the completion of the Remedial Action and if requested by EPA, copies of all requested records, documents, and information shall be delivered to the EPA Project Coordinator.

C. Settling Defendant certifies that it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability with regard to the Site since notification of potential liability by the United States regarding the Site.

XVII.

RESPONSE AUTHORITY

Nothing in this Consent Decree shall be deemed to limit the response authority of EPA under Section 104 of CERCLA, 42 U.S.C. §9604, and its enforcement authority under Section 106 of CERCLA, 42 U.S.C. §9606, or any other federal response or enforcement authority, except as specifically provided in Section XXII, below.

XVIII.

FORCE MAJEURE

A. "Force Majeure" for purposes of this Consent Decree is defined as any event arising from causes beyond the control of Settling Defendant, including its contractors and subcontractors, which delays or prevents the performance of any obligation under this Consent Decree. Force majeure shall not include inability of Settling Defendant to pay necessary costs, increased costs or expenses, non-attainment of the requirements of this Consent Decree, or failure to make timely and complete application for permits, requests for access, or any other necessary authorizations.

B. When circumstances occur which may delay the proper completion of any phase of the Work, or delay access to the Site or to any other property on which any part of the Work is to be performed, whether or not such circumstances are caused by or constitute a force majeure event, Settling Defendant shall, when it first becomes aware or should have become aware of such

circumstances, immediately notify the EPA Project Coordinator by telephone, or in the event of his or her unavailability, the Chief of the New York/Caribbean Compliance Branch of the Emergency and Remedial Response Division of EPA Region II.

Within seven (7) days of the date when Settling Defendant first becomes aware or should have become aware of the event which it contends is responsible for the delay, Settling Defendant shall supply to EPA, in writing, the reason(s) for and anticipated duration of such delay, Settling Defendant's rationale for interpreting such circumstances as being beyond its control (should that be Settling Defendant's claim), the measures taken and to be taken by Settling Defendant to prevent or minimize the delay, and the timetable for implementation of such measures.

Such notice shall be accompanied by all available pertinent documentation, including, but not limited to, third party correspondence. Failure to give notice and an explanation to the EPA Project Coordinator in a timely manner shall constitute a waiver of any claim of force majeure and may constitute grounds for EPA, in its sole discretion, to deny any extension of time for that work, regardless of whether any such extension is requested. Settling Defendant shall use its best efforts to discover and keep apprised of any circumstances which may delay the completion of any phase of the Work or delay access to the Site or any other property on which any part of the Work is to be performed.

C. If Settling Defendant claims and EPA agrees that a delay is or was attributable to force majeure, the Parties shall modify this Consent Decree or the affected plans or schedules incorporated in this Consent Decree, unless the parties agree to the contrary, to provide such additional time as may be necessary to allow the completion of the specific phase of Work and/or any succeeding phase of the Work affected by such delay, with such additional time not to exceed the actual duration of the delay caused by the event of force majeure.

D. If EPA does not agree that the reason for the delay constituted an event of force majeure, or that the duration of the delay is or was warranted under the circumstances, Settling Defendant may seek to resolve the dispute according to Section XIX., herein. Settling Defendant shall have the burden of proving that the delay is or was caused by circumstances beyond its control and that the amount of additional time requested is necessary to compensate for those circumstances.

XIX.

DISPUTE RESOLUTION

A. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree and shall apply to all provisions of this Consent Decree.

B. Any dispute between EPA and Settling Defendant which arises under or with respect to this Consent Decree shall, in the first instance, be the subject of informal negotiations between

the parties to the dispute for a period of up to thirty (30) days from the time notice of the existence of the dispute is received. The period for negotiations may be extended or shortened by agreement between EPA and Settling Defendant. A dispute shall be considered to have arisen when one party notifies the other parties in writing that there is a dispute.

C. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding paragraph, the position advanced by EPA shall be considered binding unless, within twenty (20) days after the end of the informal negotiation period, Settling Defendant provides EPA with written notice of Settling Defendant's invocation of the formal dispute resolution procedures of this Section. Said notice shall be accompanied by a written statement of the issues in dispute, the relevant facts upon which the dispute is based, any factual data, analysis or opinion supporting Settling Defendant's position, and all supporting documentation on which Settling Defendant relies (hereinafter, "Settling Defendant's Statement of Position"). After receipt of Settling Defendant's Statement of Position, EPA may submit to Settling Defendant a written statement of EPA's position on the issues in dispute, the relevant facts upon which the dispute is based, any factual data, analysis or opinion supporting EPA's position, and supporting documentation relied upon by EPA (hereinafter, "EPA's Statement of Position").

D. After receiving notice from Settling Defendant of the invocation of the formal dispute resolution procedures of this

Section, EPA may determine (which determination shall not be reviewable by a court) that the dispute is to be resolved on the administrative record. Such administrative record shall be maintained by EPA and shall include the written notification of the dispute, the Parties' Statements of Position, and, if issued, the final decision of the Director of the Emergency and Remedial Response Division, EPA Region II, pursuant to paragraph E., below.

E. Upon review of the administrative record, the Director of the Emergency and Remedial Response Division, EPA Region II, shall issue a final decision resolving the dispute. Such decision shall be binding, subject to the rights of judicial review set forth in the following paragraph.

F. Any decision issued by EPA pursuant to the preceding paragraph shall be reviewable by this Court, provided that a notice of judicial appeal is filed by the Settling Defendant within ten (10) days of receipt of EPA's decision pursuant to paragraph E., above. Said notice of judicial appeal shall set forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. A copy of said notice shall be served upon the United States prior to or contemporaneously with the filing of the notice with the Court. EPA may file a response to Settling Defendant's notice of judicial appeal.

G. In proceedings on any dispute, Settling Defendant shall have the burden of demonstrating that the position advanced by EPA is arbitrary and capricious or otherwise not in accordance with law. With respect to disputes which EPA determines shall be resolved on an administrative record, judicial review of EPA's decision shall be confined to the administrative record. In proceedings on any dispute, Settling Defendant shall bear the burden of coming forward with evidence and of persuasion on factual issues.

H. The invocation of formal dispute resolution procedures under this Section shall not of itself extend or postpone or affect in any way any obligation of Settling Defendant under this Consent Decree, except that payment of stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXI., below; except that if EPA takes longer than twenty (20) days after receipt of Settling Defendant's Statement of Position pursuant to paragraph C., above, to either submit EPA's Statement of Position pursuant to paragraph C., above, or EPA's final decision pursuant to paragraph E., above, then Settling Defendant is not obligated to pay those stipulated penalties which accrue after the conclusion of the afore-

mentioned twenty-day period and before EPA's issuance of its Statement of Position or final decision.

XX.

REIMBURSEMENT OF RESPONSE COSTS

A. Within ninety (90) days of the effective date of this Consent Decree, or on May 1, 1991, whichever is later, Settling Defendant shall pay \$92,500.00 to EPA in reimbursement for those response costs incurred by EPA with respect to the Site prior to the date of issuance of this Consent Decree for which Settling Defendant has not already obligated itself to reimburse EPA under Administrative Order on Consent, Index Number II CERCLA-70202.

B. Settling Defendant shall also pay to the Fund all costs incurred by the United States after the entry of this Consent Decree which are not inconsistent with the NCP, including those costs associated with conducting the periodic reviews referred to in Section VII, above, in assisting Settling Defendant in obtaining needed access to the Site, or other areas where Work is to be performed hereunder, in reviewing or developing the plans, reports, design documents and other items referred to or required hereunder, or in otherwise overseeing the implementation of the Work. The United States will periodically submit itemized accountings of such costs to Settling Defendant. Settling Defendant shall, within thirty (30) days of its receipt of each such accounting, pay to the Fund the amount claimed by the United States. Settling Defendant shall pay interest on the unpaid balance, which shall begin to accrue at the end of the thirty

(30) day period, at a rate established by the Department of Treasury pursuant to 31 U.S.C. §3717. Payment of amounts under this subsection are subject to Dispute Resolution as set forth in Part XIX, above.

C. All payments required by this section shall be made by cashier's or certified check made payable to the "EPA Hazardous Substance Superfund" and shall reference on their face the "North Sea Landfill Superfund Site" and the civil action number of this case. Payment shall be deemed made when received at the following address:

EPA - Region II
Attn: Superfund Accounting
P.O. Box 360188M
Pittsburgh, PA 15251

Settling Defendant shall transmit copies of each check to the persons specified in Section XXVIII, below.

XXI.

STIPULATED PENALTIES

A. Settling Defendant shall pay to the Fund stipulated penalties in the amounts set forth below for each day or part thereof that Settling Defendant fails to comply with any requirement of this Consent Decree (including, but not limited to, any time limit set forth in or established pursuant to this Consent Decree and any requirement set forth in an EPA-approved plan or schedule prepared pursuant to this Consent Decree) and for each instance of such noncompliance, unless such noncompliance is excused under the terms of this Consent Decree.

B. All penalties shall begin to accrue on the first day of failure to achieve compliance and shall continue to accrue through the final day of correction of the noncompliance, subject to the limitations set forth in Section XIX. H. Payment of penalties shall not alter in any way Settling Defendant's obligation to comply with the requirements of this Consent Decree. Such penalties shall be due and payable within thirty (30) days of Settling Defendant's receipt from EPA of a notice of noncompliance describing the noncompliance and indicating the amount of penalties due. Such sums shall be paid to the EPA Hazardous Substance Superfund and shall be remitted in the manner specified in Section XX.C., above.

C. 1. Stipulated penalties shall accrue for failure by Settling Defendant to comply with any requirements of Subsections V. D., E., F., and H., X. A. and B., XI. A., C. and E., XIII. A., XV., and XXIV. as follows:

<u>Period of Noncompliance</u>	<u>Penalty per violation per day</u>
1st through 10th day	- \$ 350
11th through 20th day	- \$ 650
21st day to 30th day	- \$ 950
31st day and beyond	- \$1800

2. Stipulated penalties shall accrue for failure by Settling Defendant to comply with any requirements of this Consent Decree not specified in subsection C. 1., above, as follows:

<u>Period of Noncompliance</u>	<u>Penalty per violation per day</u>
1st through 5th day	- ----
6th through 15th day	- \$ 1000
16th through 30th day	- \$ 2500
30th day and beyond	- \$ 4000

D. Settling Defendant may dispute EPA's right to the stated amount of stipulated penalties by filing a petition with the Court in accordance with Section XIX., above, within 30 days of receipt of the notice of noncompliance. Penalties shall accrue but need not be paid during the dispute resolution period. If Settling Defendant fails to prevail upon resolution, however, EPA shall be entitled to all penalties which accrued prior to and during the period of dispute, except as limited in XIX. H., above, within thirty (30) days of the resolution of the dispute.

E. Pursuant to 31 U.S.C. §3717, interest shall accrue on any amounts overdue under Subsection A., above, at a rate established by the Department of Treasury under 31 U.S.C. §3717 for any period of such delinquency. A handling charge shall be assessed at the end of each 30-day late period, and a six percent per annum penalty charge shall be assessed if the penalty is not paid within ninety (90) days of the due date.

F. Nothing in this section shall be construed as in any way limiting the right of the United States to seek any additional remedies, sanctions, or penalties available by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree, including, but not limited to, penalties pursuant

to Section 122(1) of CERCLA; PROVIDED THAT Settling Defendant's total penalty exposure shall be limited to \$25,000 per day for its first violation and shall be limited to \$75,000 per day for second or subsequent violations of this Consent Decree.

XXII.

COVENANT NOT TO SUE

A. In consideration of actions which will be performed and payments which will be made by Settling Defendant under the terms of the Consent Decree, and except as otherwise specifically provided in this Consent Decree, the United States covenants not to sue Settling Defendant for Covered Matters. For purposes of this section, "Covered Matters" means any and all civil claims available to the United States under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§9606(a), 9607(a), and Section 7003 of RCRA, 42 U.S.C. §6973, for the performance or funding of the Work required under this Consent Decree and for the reimbursement of the costs specified in Section XX, above. This covenant not to sue shall take effect upon EPA's issuance of a Certification of Completion in accordance with Section XXXIV, below, except that as to those actions that Settling Defendant is required under this Consent Decree to perform after EPA's issuance of a Certification of Completion, this covenant not to sue shall take effect upon Settling Defendant's satisfactory performance of those activities.

B. The covenant not to sue as set forth in this Section does not pertain to matters other than those expressly specified

to be "Covered Matters". The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters which do not fall within the definition of "Covered Matters", including, but not limited to, the following:

- (1) liability arising from hazardous substances removed from the Site;
- (2) liability arising from the past, present, or future disposal, releases, or threatened releases of hazardous substances, pollutants, or contaminants in areas not related or attributable to the Site;
- (3) damages for injury to natural resources resulting from the release of hazardous substances at or from the Site;
- (4) claims based on a failure by Settling Defendant to meet the requirements of this Consent Decree, including, but not limited to, claims for injunctive relief or claims for civil penalties pursuant to Section 122(1) of CERCLA, 42 U.S.C. §9622(1);
- (5) civil liability resulting from violations of Federal or State law which occur during implementation of the Remedial Action;
- (6) liability for response actions other than those specifically authorized by the ROD, including, but not limited to, liability for any further response actions

EPA deems necessary after conducting the periodic reviews referred to in Section VII, above;

(7) liability for all response costs incurred by the United States with respect to the Site, other than the response costs referenced in Section XX, above;

(8) any matter for which the United States is owed indemnification under Section XXV of this Consent Decree; and

(9) criminal liability.

C. Notwithstanding any other provision in this Consent Decree, the United States reserves, within its sole discretion, the following right to institute proceedings in this action, to issue an order, and/or to commence a new action where it is necessary to protect the public health, welfare, and the environment: (1) seeking to compel Settling Defendant to perform additional response work at the Site (or at any other area affected by a release or threat of release of hazardous substances at or from the Site), regardless of whether the additional response work is within the scope of the Work required under this Consent Decree or the ROD, or (2) seeking reimbursement of the United States' response costs, if:

a. For proceedings prior to EPA Certification of Completion of the Remedial Action,

(i) conditions at the Site, previously unknown to the United States, are discovered after the entry of this Consent Decree, or

(ii) information is received after the entry of this Consent Decree, and these previously unknown conditions or this information indicates that the Remedial Action is not protective of human health and the environment; or

b. for proceedings subsequent to EPA Certification of Completion of the Remedial Action,

(i) conditions at the Site, previously unknown to the United States, are discovered after the certification of completion by EPA, or

(ii) information is received after the Certification of Completion by EPA, and these previously unknown conditions or this information indicates that the Remedial Action is not protective of human health and the environment.

D. Notwithstanding any other provision in this Consent Decree, the covenant not to sue in subparagraph A, above, shall not relieve Settling Defendant of its obligation to meet and maintain compliance with the requirements set forth in this Consent Decree, including the requirements of the ROD, which are incorporated herein, and the United States reserves its right to take any and all response actions at the Site authorized by law in the event of a breach of the terms of this Consent Decree and to seek recovery of costs incurred after entry of the Consent Decree: 1) resulting from such a breach; 2) relating to any portion of the Work funded or performed by the United States; or

3) incurred by the United States as a result of having to take administrative action or seek judicial assistance to remedy conditions at or adjacent to the Site. EPA will provide Settling Defendant with notice of any defect in its performance of the obligations detailed in the Consent Decree.

E. Nothing in this Consent Decree shall constitute or be construed as a release or a covenant not to sue regarding any claim or cause of action against any person, firm, trust, joint venture, partnership, corporation or other entity not a signatory to this Consent Decree for any liability it may have arising out of or relating to the Site. The United States expressly reserves the right to sue any person other than Settling Defendant, in connection with the Site.

XXIII.

NATURAL RESOURCES DAMAGES

This Consent Decree shall not be construed to affect in any way any claims that the United States may have against Settling Defendant for any liability for damages to, destruction of, or loss of natural resources in connection with or arising from the Site, and nothing in this Consent Decree shall be construed as a release or covenant not to sue Settling Defendant for any claims arising from damages to, destruction of, or loss of natural resources, or as the agreement of any Federal natural resource Trustee to covenant not to sue Settling Defendant pursuant to Section 122(j)(2) of CERCLA, 42 U.S.C. §9622(j)(2).

XXIV.

CONTRIBUTION PROTECTION

Settling Defendant may seek contribution from any other person who is liable or potentially liable under Section 107(a) of CERCLA, 42 U.S.C. §9607(a), provided that the person has not resolved its liability to the United States in a settlement concerning the response action at the Site, pursuant to Section 113(f) of CERCLA, 42 U.S.C. §9613(f). Upon EPA's issuance of a Certification of Completion pursuant to Section XXXIV, below, Settling Defendant will have resolved its liability to the United States for the performance of the activities required by the ROD, this Consent Decree, and the payment of the costs specified in Section XX, above, and pursuant to Section 113(f) of CERCLA, shall not be liable for claims for contribution regarding such matters; provided, that as to the particular actions that Settling Defendant is required, under this Consent Decree, to perform after EPA's issuance of a Certification of Completion, Settling Defendant's liability to the United States for the performance of those actions will be deemed resolved, for purposes of Section 113(f) of CERCLA, upon Settling Defendant's satisfactory performance of those actions. The rights that Settling Defendant has, after resolving its liability to the United States in accordance with the preceding sentence, against any person who has not resolved its liability to the United States shall be subordinate to the rights of the United States.

Settling Defendant shall notify EPA thirty (30) days prior to filing an action for contribution against any other party.

XXV.

OTHER CLAIMS

A. Settling Defendant agrees to indemnify, save, and hold harmless EPA and its representatives from any and all claims or causes of action arising from acts or omissions of Settling Defendant and/or its contractors, subcontractors, or any other person acting on their behalf in the performance of the Remedial Action or their failure to perform fully, or complete the Remedial Action. For the purposes of this Section, EPA is not nor can it be construed to be an agent of Settling Defendant.

B. EPA is not to be construed as a party to, and does not assume any liability for, any contract entered into by Settling Defendant in carrying out the activities pursuant to this Consent Decree. The proper completion of the Work under this Consent Decree is solely the responsibility of Settling Defendant.

C. Settling Defendant waives any claims for damages or reimbursement from the United States or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person performing Work under this Consent Decree, including, but not limited to, claims on account of construction delays.

XXVI.

CLAIMS AGAINST THE FUND

Settling Defendant waives any rights it may have to assert any claims pursuant to Sections 106(b)(2), 111 or 112 of CERCLA, 42 U.S.C. §§9606(b)(2), 9611, 9612, or any other provision of law, directly or indirectly, against the United States for reimbursement from the Hazardous Substance Superfund of any past costs or costs incurred by Settling Defendant in performing the Work called for by this Consent Decree. Nothing in this Consent Decree shall be construed as EPA's preauthorization of a CERCLA claim against the Hazardous Substance Superfund within the meaning of 40 CFR §300.25.

XXVII.

INSURANCE/FINANCIAL RESPONSIBILITY

Prior to commencing any on-Site work, Settling Defendant shall provide evidence to EPA demonstrating that Settling Defendant passes the financial test described in 40 CFR §264.147(f). In addition, for the duration of the Work under this Consent Decree, Settling Defendant shall satisfy all applicable laws and regulations regarding the provision of workmens' compensation insurance.

XXVIII.

NOTICES

Whenever, under the terms of this Consent Decree, notice is required to be given, a report or other document is required to be forwarded by one party to another, service of any papers or

process is necessitated by the dispute resolution provisions contained herein, or any other written communication is required, such correspondence shall be directed to the following individuals at the addresses specified below:

A. As to the United States or EPA:

1 copy: Chief, New York/Caribbean Superfund/ Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region II
26 Federal Plaza
New York, New York 10278

Attention: North Sea Landfill Site Attorney

3 copies: Chief, New York/Caribbean Compliance Branch
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region II
26 Federal Plaza, Rm. 747
New York, N.Y. 10278

Attention: North Sea Landfill Site Project Manager

1 copy Chief, Environmental Enforcement Section
Land & Natural Resources Division
U.S. Department of Justice
Benjamin Franklin Station
P.O. Box 7611
Washington, D.C. 20044

B. As to Settling Defendant:

1 copy: Town of Southampton
Office of the Town Attorney
Town Hall, 116 Hampton Road
Southampton, NY 11968

1 copy: Town of Southampton
Office of the Town Supervisor
Town Hall, 116 Hampton Road
Southampton, NY 11968

In addition, when submitting to EPA any written communication required hereunder, Settling Defendant shall simultaneously submit two (2) copies of that communication to:

Director, Division of Hazardous Waste Remediation
New York State Department of Environmental Conservation
Room 222
50 Wolf Road
Albany, N.Y. 12233-0001

Attention: North Sea Landfill Site Project Manager

XXIX.

PUBLIC PARTICIPATION

Final approval and entry of this Consent Decree are subject to the requirements of Section 122(d)(2) of CERCLA, 42 U.S.C. §9622(d)(2), and 28 CFR §50.7.

XXX.

MODIFICATION

Material modifications to the terms of this Consent Decree may only be made with written approval of all parties to this Consent Decree. Such written notification shall not be effective until approval by the Court in an order. No oral modification of this Consent Decree shall be effective. Modifications that do not materially alter the requirements of this Consent Decree may be made upon the written consent of all parties, which consent shall be filed with this Court. Nothing herein shall be deemed to alter the Court's power to supervise or modify this Consent Decree.

XXXI.

ADMISSIBILITY OF DATA

In the event that the Court is called upon to resolve a dispute concerning implementation of this Consent Decree, Settling Defendant waives any objection to the admissibility into

evidence of the results of any analyses of samples collected by or for them during the Remedial Action, or any other analytical data gathered, generated, or evaluated pursuant to this Consent Decree.

XXXII.

CONTINUING JURISDICTION

The Court retains jurisdiction over both the subject matter of this Consent Decree and Settling Defendant for the duration of the performance of the terms and provisions of this Consent Decree for the purposes of issuing such further orders or directions as may be necessary or appropriate to construe, implement, modify, enforce, terminate, or reinstate the terms of this Consent Decree or for any further relief as the interest of justice may require.

XXXIII.

COMMUNITY RELATIONS

Settling Defendant shall cooperate with EPA in providing information relating to the Remedial Action to the public. As requested by EPA, Settling Defendant shall participate in the preparation of all appropriate information disseminated to the public and, to the extent possible, in public meetings which may be held or sponsored by EPA to explain activities at or concerning the Site.

XXXIV.

EFFECTIVE AND TERMINATION DATES

A. This Consent Decree shall be effective upon the date of its entry by the Court.

B. Except as stated otherwise in Section XXII.A., above, the covenant not to sue provided by Section XXII shall become effective upon EPA's issuance of a Certification of Completion according to the following:

1) Following receipt of the Draft Remedial Action Report required by Section VI. D, above, EPA shall review the Report and any supporting documentation. EPA shall issue a Certification of Completion upon its determination that Settling Defendant has satisfactorily completed the Work (apart from the activities referred to in paragraph (2) of this subsection), including any EPA-authorized corrective measures to the Remedial Action, and has achieved all of the standards of performance required under this Consent Decree. After submittal of the aforementioned Draft Remedial Action Report, but prior to the issuance of any Certification of Completion, EPA may undertake a review of the Remedial Action under Section VII. If such a review occurs, Certification shall not be issued if EPA determines at that time, in its sole discretion, that further response action is necessary to satisfy the requirements of this Consent Decree to protect the public health, welfare, and the environment pursuant to Section 104 or 106 of CERCLA. This

subsection is subject to Dispute Resolution, as set forth in Part XIX, above.

2) Certification of completion of the Remedial Action does not in any way affect Settling Defendant's remaining obligations under the Consent Decree, including operation, maintenance and monitoring, record retention, payment of penalties, and the reimbursement of those costs specified in Section XX.B., above, which are incurred after the Certification of Completion is issued by EPA.

XXXV.

FUTURE PROCEEDINGS

In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendant shall not assert that the United States is in any way precluded or barred from instituting such an action by the principles of res judicata or rules against claim splitting. In addition, Settling Defendant waives the right to contest the validity or terms of this Consent Decree.

XXXVI.

ENTRY OF THIS CONSENT DECREE

Settling Defendant consents to the entry of this Consent Decree without further notice.

XXXVII.

SECTION HEADINGS

The section headings set forth in this Consent Decree are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Consent Decree.

XXVIII.

SERVICE OF PROCESS

Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of Settling Defendant with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in this manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure, including service of a summons, and any applicable local rules of this Court.

APPROVED and ENTERED this 20th day of February, 1998.


UNITED STATES DISTRICT JUDGE

Hempstead, N.Y.

WE HEREBY CONSENT to the entry of this decree.

FOR THE UNITED STATES:

9/5/90
DATE

Richard B. Stewart
RICHARD B. STEWART
Assistant Attorney General
Land and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

8/29/90
DATE

Jonathan Marks
JONATHAN MARKS
Trial Attorney
Land and Natural Resources
Division
U.S. Department of Justice

ANDREW J. MALONEY
United States Attorney
Eastern District of New York

9/24/90
DATE

Thomas M. Birk
By:
Special Assistant United States Attorney
Eastern District of New York

8-7-90
DATE

William J. Pysycki
CONSTANTINE SIDAMON-ERISTOFF
Regional Administrator
U.S. Environmental Protection
Agency, Region II

TOWN OF SOUTHAMPTON

By:

8-6-90
DATE

Henry S. Thompson

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK, ss:

_____, being duly sworn, says that on the _____ day of _____, I deposited in Mail Chute Drop for mailing in the U.S. Courthouse, Cadman Plaza East, Borough of Brooklyn, County of Kings, City and State of New York, a _____ of which the annexed is a true copy, contained in a securely enclosed postpaid wrapper directed to the person hereafter named, at the place and address stated below:

Sworn to before me this
day of _____

AFFIDAVIT OF PERSONAL SERVICES

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK, ss:

_____, being duly sworn, says that he is employed in the office of the United States Attorney for the Eastern District of New York. That on the _____ day of _____, he served a true copy of the annexed _____ on the office of attorney for _____ herein, located at _____, Borough of _____, City of New York, by leaving a true copy of same with his clerk or other person in charge of said office.

Sworn to before me this
day of _____